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Ben G. Almond
Vice President-
Federal Regulatory

Suite 900
1133-21st Street N.W.
Washington, D.C. 20036-3351
202 463-4112
Fax 202 463-4198
Internet: almond.ben@bsc.bls.com

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September 1, 1999

Ms Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Spectrum Aggregation Limits for Wireless Telecommunications Carriers
WT Docket No. 98-205 Written Ex Parte

Dear Ms. Salas:

The attached document provides additional information concerning a critical issue currently being addressed in the above mentioned proceeding. It relates to the need for elimination of the 45 MHz spectrum cap to enable domestic US telecommunications carriers to rollout new and innovative 3G services within the next several years. It is essential that these carriers have the flexibility to acquire additional CMRS spectrum over and above the present limits of the cap so that appropriate vendor equipment will be secured for early deployment of 3G services. This will also enable domestic carriers to maintain worldwide communications competitiveness with carriers providing 3G services in Europe and Japan.

Please associate this notification and the accompanying document with the referenced docket proceeding.

If there are any questions concerning this matter, please contact the undersigned.

Sincerely,

Ben G. Almond

Vice President—Federal Regulatory

cc: Ari Fitzgerald
Peter Tenhula
Dan Connors
Adam Krinsky
Robert A. Calaff
Mark D. Schneider
Thomas J. Sugrue
Kris Monteith
Nancy Boocker

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THE CMRS SPECTRUM CAP — A SERIOUS IMPEDIMENT TO U.S. DEPLOYMENT OF 3G WIRELESS SERVICE

The United States should be a leader in the development and implementation of new, advanced wireless services. Third-generation ("3G") wireless technology will provide consumers with wireless access to data, multimedia, internet, and many other services beyond today's mobile phone and paging service. U.S. leadership potential is endangered, however, by the so-called CMRS spectrum cap, Rule Section 20.6, which limits wireless carriers to about 45 MHz of cellular, PCS, and SMR spectrum. This rule virtually ensures that other nations will receive the benefits of advanced 3G services earlier and more extensively than the United States, to the detriment of American consumers, because it denies U.S. carriers the flexibility to acquire available spectrum that is being underused and commit it to the provision of new and better services to the public. As we show, the only solution to this serious problem is to eliminate the spectrum cap now.

The companies best positioned to bring 3G to market and make these new and exciting broadband services available to consumers throughout the nation are the country's major wireless service providers — companies such as BellSouth, AT&T, and Vodafone AirTouch. These companies have the financial and technical expertise, and the depth of experience in the wireless industry, needed to make 3G a success in the United States. They can do so, however, only if the Commission gives them the flexibility to respond to the public's ever-growing demand for new and better services.

Unfortunately, these companies are the ones who will have the most difficulty in deploying broadband 3G services because they are currently using a significant portion of the allowable 45 MHz of wireless spectrum to provide wireless phone and related services to the public. (For example, under the current rule, BellSouth cannot acquire an additional 20 or 30 MHz of PCS spectrum where it already holds a 25 MHz cellular license or a 30 MHz PCS license, together with an SMR license used for wireless data service.) If the 45 MHz spectrum cap remains in place, they will be severely constricted in their ability to provide broadband 3G services, which will require more spectrum than is currently permitted if the carriers continue to provide traditional forms of service. The only spectrum that can readily be used for rapid introduction of these new services is the spectrum already allocated to cellular, PCS, and SMR and held by licensees — spectrum that is specifically subject to the cap. As a result, companies will not be able to acquire the additional spectrum that will be needed to deploy broadband 3G services quickly and efficiently.

Just how much additional CMRS spectrum is needed to support the deployment of 3G services depends on a number of factors including technology choice, current penetration levels and the demand for 3G services. Over the long term, major U. S. Service providers of broadband 3G services are expected to need somewhere between 70 and 90 MHz. However, the amount of spectrum incumbent carriers need in the existing CMRS blocks depends on what CMRS spectrum is available for purchase in a given market. Consequently, incumbent carriers need the flexibility to own at least 60 or 65 MHz of the spectrum currently subject to the cap. This would allow a carrier with a 30 MHz PCS license or a 25 MHz cellular license and up to 5 MHz of SMR spectrum to purchase up to an additional 30 MHz PCS license.

Even 65 MHz will not be sufficient for some carriers in a given market unless the current cellular geographic overlap and attribution rules are not relaxed. (For example, BellSouth holds a 10 MHz license in at least one of its BTA markets and is also attributed 25 MHz due to a small cellular overlap in the BTA and approximately 5 MHz due to its wireless data SMR service. In this BTA, BellSouth would be prohibited from acquiring a 30 MHz PCS license unless it was willing to sell its existing PCS or cellular business in the BTA.)

The Commission should reexamine the spectrum cap *now* and make a firm decision that the spectrum cap will be lifted as of a date certain. Relief is needed right away because carriers must begin making commitments now in order to bring 3G services to market quickly. 3G equipment will become available by early 2000, meaning that contracts will have to be negotiated with vendors by mid-to-late 2000 to have access to equipment for an early roll-out. Needless to say, U.S. carriers will be competing against those from other nations in seeking commitments from vendors. Without assurance that they will be able to acquire sufficient spectrum to deploy new services, it will be difficult for them to make firm commitments to vendors during the negotiations that will have to take place in early 2000, while their competitors from other nations will not be so constrained. In short, without assurance *very soon* that the spectrum cap will be lifted by mid-2001 at the latest, U.S. carriers will be at a profound disadvantage in the negotiations needed for a quick rollout of 3G service.

The spectrum cap also casts a shadow on U.S. carriers' willingness to make the financial commitments needed to plan deployment, because there is no certainty that they will be able to acquire the spectrum needed — even if there are willing sellers of the spectrum blocks needed.

There is spectrum that major wireless carriers *could* acquire for 3G deployment, but for the spectrum cap — namely, spectrum already allocated and licensed for cellular, PCS, and SMR service. As the Commission knows, there are plenty of undercapitalized wireless licensees who acquired spectrum in auctions designed to promote new entry. Many of those licensees are in bankruptcy or near it. Even if those companies, who have vacant spectrum and the ability (under the rule) to acquire more, wanted to provide 3G services, they do not have the financial wherewithal, the technical expertise, or the experience needed to make a success of it. Elimination of the spectrum cap would allow these companies to work with experienced wireless companies to put their spectrum to productive use.

The only option that will ensure that the U.S. can lead the world in bringing new 3G services to its consumers is *full elimination of the spectrum cap.* All of the alternatives to full elimination will seriously impede carriers in their efforts to deploy 3G services quickly:

- A *sunset date* will not do the job, because carriers will not have the certain ability to acquire spectrum in time to negotiate deals with vendors by mid-2000. BellSouth had previously considered a sunset to be a livable alternative, but given the rapid pace of 3G development and the level of competition in the wireless industry worldwide, this clearly will no longer allow U.S. companies to compete with carriers from other nations in negotiating favorable equipment supply contracts.

- *Merely increasing the cap* will not work, either. Carriers need to know that as demand grows, they will be able to compete with other carriers for additional spectrum resources in order to continue growing their businesses. Moreover, as carriers increase the variety of services that they offer, they will need access to additional spectrum for those services.

- *Adjusting the overlap and attribution rules* applicable to the cap also falls short. These rules promote the development of complex joint venture or partnership arrangements designed primarily to satisfy the rules. These rules do not allow experienced, financially capable carriers to use the venture's spectrum as their own, in a single integrated business focused on providing the best possible service to the public. The rules impede operating and marketing flexibility and thereby increase business and investment risks. Moreover, it takes considerable time to negotiate and establish the complex relationships required. All of these factors make clear that even substantially liberalized overlap and attribution rules will severely handicap U.S. carriers in deploying 3G services.

- *Forbearance* from the existing cap will not help, either. Leaving the cap on the books but not enforcing it for the time being simply does not give businesses the level of assurance needed to commit billions of dollars to a multi-year business rollout. If the rule remains in place, there will always be the risk that it will someday be enforced. This places a cloud on carriers' willingness to make the substantial commitment to 3G that is necessary to ensure that the United States will be a leader in the world 3G marketplace.

The Commission is understandably concerned about the competitive effects of eliminating the cap. Such concerns are not a reason for maintaining the cap, however. With or without a cap, any company acquiring spectrum from another licensee will have to file applications for consent to assignments of licenses or transfers of control, pursuant to Section 310(d). These applications give the Commission a full opportunity to consider the competitive ramifications of the acquisition, including antitrust concerns regarding industry concentration, and balance these factors against the public interest in developing a strong domestic 3G service. Given the worldwide pace of 3G development, the American consumer will be better served by a case-by-case analysis of such issues than by a rule that guarantees the U.S. will continue to lag behind other nations.